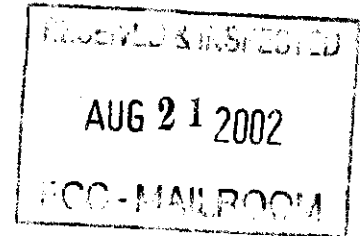


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Review of the Decision of the)	
Universal Service Administrator by)	
)	
Ellensburg School District 401)	File No. SLD-266152
Newark, New Jersey)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER**Adopted: August 8, 2002****Released: August 9, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Ellensburg School District 401 (Ellensburg), Ellensburg, Washington, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Ellensburg seeks review of SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Ellensburg's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has

¹ Letter from James Baker, Ellensburg School District No. 401, to Federal Communications Commission, filed January 3, 2002 (Request for Review).

² *Id.* Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁵ A commitment of support is contingent upon the filing of the applicant's FCC Form 471.⁶

3. Ellensburg applied for discount telecommunication services for Funding Year 2001 on January 19, 2001.⁷ Instead of using the appropriate Year 4 FCC Form 471 application,⁸ Ellensburg applied for support using a Year 2000 FCC Form 471 application.⁹ By letter dated July 26, 2001, SLD informed Ellensburg that its application did not meet Minimum Processing Standards for Funding Year 2001.¹⁰ Specifically, SLD informed Ellensburg that, because it used the Year 2000 FCC Form 471 rather than the Funding Year 2001 Form, its application could not be processed.¹¹

4. Ellensburg filed an appeal with SLD, admitting that it had used an incorrect FCC Form 471 dated September 1999 instead of the correct OMB-approved form and asked that USAC accept its Funding Year 2000 FCC Form 471 as timely filed for Funding Year 2001.¹² SLD denied Ellensburg's appeal.¹³ SLD explained that according to program rules, the FCC Form 471 is considered to be received when it has the required information necessary to pass Minimum Processing Standards. Specifically, SLD noted that because the submitted FCC Form 471 was not the correct OMB-approved form for Funding Year 2001, it was being returned to Ellensburg unprocessed. In response, Ellensburg then filed the instant appeal, asking that its

⁵ 47 C.F.R. § 54.504(c).

⁶ *Id.*

⁷ FCC Form 471, Ellensburg School District 401, filed January 19, 2001. In prior years, this funding period was referred to as Funding Year 4. Funding years are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2001 and ends on June 30, 2002, previously referred to as Funding Year 4, is now called Funding Year 2001. The funding period which begins on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

⁸ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Funding Year 2001 Form 471).

⁹ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Funding Year 2000 Form 471).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Baker, Ellensburg School District 401, dated July 26, 2001.

¹¹ *Id.* SLD explained that the FCC Form 471 submitted was not the correct OMB-approved form dated October 2000 in the lower right-hand corner of the form.

¹² Letter from James Baker, Ellensburg School District 401, to Schools and Libraries Division, Universal Service Administrative Company, filed August 23, 2001.

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Baker, Ellensburg School District 401, dated November 27, 2001 (Administrator's Decision on Appeal).

funding request be granted notwithstanding its error in submitting its application on an incorrect form.¹⁴

5. We have reviewed the record and conclude that Ellensburg has not demonstrated sufficient basis for relief. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.¹⁵ It is therefore incumbent upon applicants to determine whether their applications are in compliance with program requirements prior to filing. Because applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used. Ellensburg should have determined that it was using the wrong application form. The Wireline Competition Bureau has previously upheld this requirement.¹⁶ We see no reason to deviate from that precedent here.

6. To the extent that Ellensburg seeks a waiver of program rules, we find no basis to grant the waiver. A waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁷ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In the instant case, we conclude that Ellensburg fails to demonstrate special circumstances warranting a deviation from our rules, and therefore we deny its Waiver Request.

¹⁴ Request for Review.

¹⁵ See generally Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

¹⁶ *Request for Review of the Decision of the Universal Service Administrator by Fair Lawn Board of Education Fair Lawn, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket No. 96-45 and 97-21, Order, 16 FCC Rcd 12901 (Com. Car. Bur. 2001).

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed January 3, 2002, by Ellensburg School District No. 401, Ellensburg, Washington, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark Seifert by ENE

Mark G. Seifert, Deputy Chief,
Telecommunications Access Policy Division
Wireline Competition Bureau